U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34905333

Date: NOV. 13, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a hydrologist who seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed a subsequent appeal and two subsequent motions – first, a motion to reconsider, followed by a combined motion to reopen and reconsider, both of which we dismissed as untimely. The matter is now before us on a third motion – another combined motion to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

As a preliminary matter, we noted that the scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the combined motion to reopen and reconsider as untimely.

First, we will address the Petitioner's motion to reopen, which must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner offers evidence that only addresses deficiencies discussed in the Director's denial, but she does not provide new facts pertaining to our prior decision to dismiss her combined motion due to its untimely filing. Because the Petitioner has not established new facts that would

warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

Next, we will address the Petitioner's motion to reconsider, which must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). As stated earlier, our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In this matter, our latest decision contemplated the propriety of our dismissal of the Petitioner's first motion – a motion to reconsider – on the basis that it was untimely filed. In our prior decision, we summarized the instructions for filing a motion to reconsider, including where to file and the 30-day filing deadline, which allows three additional days for mailing. We also acknowledged that the filing deadline ended on a federal and therefore allowed another day, in addition to the three allowed for mailing, in calculating the Petitioner's filing deadline. *See* 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8(b). Ultimately, after applying these parameters, we determined that the Petitioner's motion to reconsider, which U.S. Citizenship and Immigration Services (USCIS) received 12 days after the filing deadline, was correctly dismissed. We then pointed out that the shipping label on the subsequent motion – the combined to reopen and reconsider that is the subject of this current proceeding – was mailed on the filing deadline for that motion. However, as noted in our latest decision, the filing date is not the date a filing is mailed, but rather the date it is properly received by USCIS in accordance with filing instructions. *See generally* 1 *USCIS Policy Manual* B.6(C), https://www.uscis.gov/policy-manual.

Because the Petitioner's prior combined motion was not *received* by USCIS by the deadline, but rather one week after that deadline, we determined that that motion was also untimely filed and dismissed it on that basis. We cited the regulation at 8 C.F.R. § 103.5(a)(1)(i), which states that an extension of the filing deadline is not permitted for motions to reconsider. And while we acknowledged that this regulation permits us to use discretion in excusing an untimely filing of a motion to reopen, we noted that the untimeliness may only be excused upon a petitioner's showing that the delay was reasonable and beyond their control. We determined, however, that the Petitioner's claim that "it was difficult for me [the Petitioner] to finish printing everything just in time" did not qualify as reasonable and beyond the Petitioner's control. As such, the untimely filing of the Petitioner's motion to reopen could not be excused.

On current motion, the Petitioner apologizes for the untimely filing, stating that "it was not in my hands to send you [sic] on time." The Petitioner does not, however, dispute the correctness of our decision to dismiss her motion on the basis of its untimely filing. Rather, the Petitioner discusses and seeks further consideration of the Director's denial, which was based on evidentiary deficiencies pertaining to the Petitioner's claimed eligibility for classification as an individual of extraordinary ability. In sum, the Petitioner seeks to reargue facts and issues that we had already considered, but she does not address the basis of our prior decision to dismiss her combined motion to reopen and reconsider. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

We may grant motions that satisfy the motion requirements and demonstrate eligibility for the requested benefit, and we will not re-adjudicate the petition anew. The Petitioner does not establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. Therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.